

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17586
[REDACTED],)	
)	DECISION
Taxpayers.)	
_____)	

On July 9, 2003, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayers), proposing income tax, penalty, and interest for the taxable year 1998 in the total amount of \$1,513.

On September 10, 2003, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not respond to the Tax Commission's hearing rights letter and have provided no additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information that showed the taxpayers sold real property in Idaho in 1998. The Bureau researched the Tax Commission's records and found the taxpayers did not file an Idaho individual income tax return for the taxable year 1998. Idaho Code section 63-3026A(3)(ii) states that income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from the ownership or disposition of any interest in real or tangible personal property located in Idaho.

The Bureau sent the taxpayers a letter asking them about the sale of the Idaho property and their requirement to file an Idaho income tax return. The taxpayers responded that they would file a return. After additional correspondence with the taxpayers, the Tax Commission received the taxpayers' 1998 Idaho income tax return. The Bureau reviewed the return and found that the taxpayers claimed a capital gains deduction. The Bureau looked at the information presented on the

taxpayers' return and determined the taxpayers were not entitled to the Idaho capital gains deduction. The Bureau corrected the taxpayers' return and sent them a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination. They stated their protest was to protect their appeal rights. The taxpayers stated the copy of the explanation of the Bureau's adjustments was not legible and, until they received an explanation of the adjustment, they could not properly evaluate the issues. The taxpayers requested a legible copy and said then they would send an appropriate response to the Notice of Deficiency Determination.

The Bureau acknowledged the taxpayers' protest and sent them another copy of the explanation of the adjustment to their return. The taxpayers' response was a completed power of attorney form appointing their accountant as their representative. The Bureau received nothing further from the taxpayers, so the matter was referred for administrative review.

The Tax Commission sent the taxpayers a letter giving them two methods for having the Notice of Deficiency Determination redetermined. The taxpayers did not respond. The Tax Commission sent a follow-up letter to the taxpayers, but still they failed to respond. Therefore, the Tax Commission decided the matter based upon the information available.

The taxpayers were residents of California in 1998. During that year, they sold property located in Idaho. The Idaho Code is clear in section 63-3026A(3)(ii) that income resulting from the disposition of real property in Idaho is Idaho source income. Idaho Code section 63-3030 sets the filing requirement thresholds for individuals having Idaho source income. The threshold for nonresident individuals for tax year 1998 was \$2,500. Therefore, if the taxpayers had Idaho source income in excess of \$2,500, they were required to file an Idaho income tax return.

The taxpayers did not contest their requirement to file an Idaho income tax return. They filed a return and reported the sale of the Idaho property as their only source of Idaho income. The taxpayers reported a gain on the sale of the property and claimed a capital gains deduction.

Idaho Code section 63-3022H stated,

(1) If an individual taxpayer reports a net capital gain in determining taxable income, sixty percent (60%) of the net capital gain from the sale or exchange of qualified property shall be a deduction in determining taxable income.

(2) The deduction provided in this section is limited to the amount of the net capital gain from all property included in federal taxable income. Net capital gains treated as ordinary income by the internal revenue code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero.

The Bureau adjusted the taxpayers' 1998 return [Redacted]. The Bureau cited subsection (2) of Idaho Code section 63-3022H as authority for the adjustment.

[Redacted] The Tax Commission finds the Bureau correctly adjusted the taxpayers' 1998 Idaho income tax return. The Bureau added interest and penalty to the taxpayers' tax deficiency. The Tax Commission reviewed those additions and found them appropriate and in accordance with Idaho Code sections 63-3045 and 63-3046.

WHEREFORE, the Notice of Deficiency Determination dated July 9, 2003, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$966	\$242	\$365	\$1,573

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayers' right to appeal this decision is enclosed.

DATED this ____ day of _____, 2004.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2004, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.

[REDACTED]